

Central Valley Regional Water Quality Control Board

REVISED HEARING PROCEDURES (4 AUGUST 2009)  
FOR CLEANUP AND ABATEMENT ORDER  
R5-2009-xxxx

ISSUED TO

BAILEY MINERALS CORPORATION; TERHEL FARMS, INC.; MAGMA POWER COMPANY; CORDERO MINING COMPANY; DR. RICHARD L. MILLER; HOLIDAY FOUNDATION, INC.; SUNOCO ENERGY DEVELOPMENT COMPANY; HOMESTAKE MINING COMPANY; BONNEVILLE INDUSTRIES, INC.; FILIATRA, INC.; ASERA WESTERN CORPORATION; AND THE AMERICAN LAND CONSERVANCY

CENTRAL, CHERRY HILL, EMPIRE, MANZANITA, AND WEST END MINES  
COLUSA COUNTY

SCHEDULED FOR 7/8/9 OCTOBER 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

**Background**

On 21 October 2005, the Central Valley Water Board adopted Resolution R5-2005-0146, which amended the Water Quality Control Plan (Basin Plan) for the Sacramento and San Joaquin River Basins. This amendment, which implements Federal Water Pollution Control Act (Clean Water Act) section 303, directs the Central Valley Water Board to issue Cleanup and Abatement Orders (CAOs) or to take other appropriate actions designed to control discharges from the inactive mines in the Cache Creek Watershed.

The proposed CAO imposes cleanup obligations, including characterizing waste material, surveying water supply wells, and conducting remediation activities, on those who the Prosecution Team alleges have legal responsibility for these mining wastes in the Cache Creek Watershed (Dischargers). A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 7/8/9 October 2009 meeting.

**Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the CAO. At the hearing, the Central Valley Water Board will consider whether to issue the CAO as proposed, whether to modify or remand the CAO, or whether to direct other appropriate actions designed to control discharges from the inactive mines in the Cache Creek Watershed. The public hearing on 7/8/9 October will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The Prosecution Team will provide the Designated Parties more specific date and time information after the agenda is finalized. Any person requesting accommodation of a scheduling conflict must notify Ken Landau (contact information below) of the conflict no

later than **16 September 2009**. The Board may not be able to accommodate all scheduling requests. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings).

### **Hearing Procedures**

The hearing will be conducted in accordance with these Hearing Procedures. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

The procedures and deadlines herein may be amended by the advisory team in its discretion. Any objections to the draft proposed Hearing Procedures were due on 10 July 2009. Therefore, all objections to existing provisions of these hearing procedures that were not submitted by 10 July 2009 have been waived. All parties received notice of a pre-hearing conference held on 29 July 2009, at which the participating parties agreed to a revised briefing schedule. The Advisory Team believes these revisions resolve all pending objections, except objections regarding hearing presentation times. However, any designated party may submit objections to the revisions that follow, or may renew timely, unresolved objections by submitting the objections in writing to all Designated Parties and the Advisory Team so they are received by 5:00 p.m. on **19 AUGUST 2009**. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

### **Hearing Participants**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

### **Hearing Participants**

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy

statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Bailey Minerals Corporation
3. Terhel Farms, Inc.
4. Magma Power Company
5. Cordero Mining Company
6. Dr. Richard L. Miller
7. Holiday Foundation, Inc.
8. Sunoco Energy Development Company
9. Homestake Mining Company
10. Bonneville Industries, Inc.
11. Filiatra, Inc.
12. Asera Western Corporation
13. The American Land Conservancy

### **Primary Contacts**

#### **Advisory Team:**

Pamela Creedon, Executive Officer  
Kenneth Landau, Assistant Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
klandau@waterboards.ca.gov

Lori Okun, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Mailing address: PO Box 100, Sacramento, CA 95812  
Physical address: 1001 I Street, Sacramento, CA 95814  
Phone: (916) 341-5165; fax: (916) 341-5199  
lokun@waterboards.ca.gov

**Prosecution Team:**

Joe Karkoski, Assistant Executive Officer (Acting)  
John Russell, Supervising Engineering Geologist  
Victor Izzo, Senior Engineering Geologist  
Jeffrey Huggins, Water Resources Control Engineer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Phone: (916) 464-4626; fax: (916) 464-4704  
vizzo@waterboards.ca.gov

Patrick Pulupa, Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel  
Mailing address: PO Box 100, Sacramento, CA 95812  
Physical address: 1001 I Street, Sacramento, CA 95814  
Phone: (916) 341-5189; fax: (916) 341-5199  
ppulupa@waterboards.ca.gov

**Dischargers:**

Bailey Minerals Corporation  
Represented by Michael J. Morrison  
1495 Ridgeview Drive, Suite 200  
Reno, NV 89519  
morrisonlaw@pyramid.net

Terhel Farms, Inc.  
Terri Harter  
5041 Butter Road  
Colusa, CA 95932

Magma Power Company  
Represented by Sanjay Ranchod  
Paul, Hastings, Janofsky & Walker, LLP  
55 Second Street, 24<sup>th</sup> Floor  
San Francisco, CA 94105-3441  
sanjayranchod@paulhastings.com

Cordero Mining Company  
Sunoco Energy Development Company  
Represented by Andy Zdon, The Source Group  
3451-C Vincent Road  
Pleasant Hill, California 94523  
azdon@thesourcegroup.net

Dr. Richard L. Miller  
Represented by David Alden  
15350 Seadrift Ave  
Box 143  
Caspar, CA 95420

dalden@mcn.org

Holiday Foundation, Inc.  
Represented by Robert L. Ross  
513 SW "C" Avenue  
Lawton, OK 73501  
r\_l\_ross@sbcglobal.net

Homestake Mining Company  
Represented by Gerald F. George  
PO Box 7880  
San Francisco, CA 94120-7880  
gerald.george@pillsburylaw.com

Bonneville Industries, Inc.  
Richard Coombs, Agent for Service of Process  
1430 Alhambra Blvd., Suite 100  
Sacramento, CA 95816  
rec1146@aol.com

Filiatra, Inc.  
Anthony Smernes  
520 Hawkcrest Drive  
Sacramento, CA 95835  
asmernes@hotmail.com

Asera West Corporation  
Larry L. Asera  
164 Robles Drive, PMB 252  
Vallejo, CA 94591  
LAsera@solanocoe.net

American Land Conservancy  
Kerry O'Toole, Agent for Service of Process  
250 Montgomery Street, Suite 210  
San Francisco, CA 94104  
[kerry@aclnet.org](mailto:kerry@aclnet.org)

### **Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Pamela Creedon, Executive Officer; Ken Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Joe Karkoski, Assistant Executive Officer (Acting); John Russell, Supervising Engineering Geologist; Victor Izzo, Senior Engineering Geologist; Jeffrey Huggins, Water Resources Control Engineer; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who

normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team act as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the CAO between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### **Hearing Time Limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: the Board's Prosecution team shall have a combined 45 minutes to present evidence, cross-examine witnesses (if warranted) and provide a closing statement; each other designated party (or group of designated parties, as listed under Hearing Participants, above) shall each have a total of 15 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team (with a copy to all designated parties) so that it is received no later than the due date under Important Deadlines, below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain why the testimony, comments or legal argument could not be presented adequately in writing before the hearing.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

### **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The designated parties shall submit 3 hard copies and one electronic copy of the information described in items 1 through 4 above to Ken Landau, with an electronic copy to Lori Okun, by the due dates stated below under Important Deadlines. In addition to the foregoing, each designated party shall send (1) one paper or electronic copy of the above information to each of the other designated parties by 5 p.m. on the applicable deadline.

Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the electronic submissions. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject submittals solely for failure to provide electronic copies.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

**Evidentiary Documents and File**

The draft Cleanup and Abatement Order and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, in Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at

<http://www.waterboards.ca.gov/centralvalley/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Jeff Huggins at (916) 464-4639.

**Questions**

Questions concerning this proceeding may be addressed to Lori Okun at (916) 341-5165.

**IMPORTANT DEADLINES**

- |                   |   |
|-------------------|---|
| 19 August 2009    | All Dischargers evidence or written legal argument rebutting or opposing other Dischargers' pre-23 July 2009 submittals.  |
| 19 August 2009    | All objections to these Hearing Procedures (see page 2).  |
| 26 August 2009    | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above. The Prosecution Team's submission must include the legal and factual basis to find each named discharger is responsible for the cleanup under Water Code section 13304; a list or attached copy of all evidence on which the Prosecution Team relies; the witness information required under items 3-4 for all witnesses, including staff; and responses to all Discharger materials submitted by 22 July 2009. |
| 16 September 2009 | All Dischargers' deadline for submission of all written materials required under "Evidence and Policy Statements," above.   |
| 16 September 2009 | Submit requests for scheduling accommodations (see page 1), and any request for additional time (see Hearing Time Limits, above). (At the hearing, designated parties may request additional time to respond to <i>new</i> rebuttal evidence, comments or legal argument submitted by other parties on or after this date.)   |
| 21 September 2009 | Prosecution Team shall submit a summary agenda sheet ("buff sheet") for this item to be included in the Board members' agenda package and posted on the internet. The buff sheet shall clearly state that it was prepared by the Prosecution Team. The Prosecution Team shall provide a copy of the buff sheet to all parties by mail or email.   |



23 September 2009 All Dischargers' deadline for any written rebuttal evidence, written comments or written legal argument in response to other Dischargers' 16 September 2009 submittals.

7/8/9 October 2009 Hearing